

OPEN MEETING AGENDA ITEM
ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
ROBERT BURNS
SUSAN BITTER SMITH

2013 JUN 18 P 2:27

DOCKETED

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C., DBA JOHNSON
UTILITIES COMPANY FOR AN INCREASE IN
ITS WATER AND WASTEWATER RATES FOR
CUSTOMERS WITHIN PINAL COUNTY,
ARIZONA.

DOCKET NO. WS-02987A-08-0180

Arizona Corporation Commission

DOCKETED

JUN 18 2013

DOCKETED BY

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**SWING FIRST GOLF LLC
SUPPLEMENTAL RESPONSE TO PETITION TO AMEND DECISION**

Swing First Golf LLC ("Swing First") hereby makes a supplemental responses to the
"Petition to Amend Decision No. 71854, Pursuant to A.R.S. § 40-252" filed on March 8, 2013,
by Johnson Utilities, LLC ("Johnson Utilities"). Swing First provides additional information in
support of its position that Johnson Utilities' request should not be considered until Johnson
Utilities is in full compliance with the Arizona Department of Environmental Quality ("ADEQ")
and has resolved all outstanding customer service issues with Swing First.¹ Johnson Utilities
should provide concrete evidence that it can act as a responsible corporate citizen before the
Commission provides it a further rate increase.

I ADEQ HAS ISSUED TWO NEW NOVS TO JOHNSON UTILITIES

On May 30, 2013, ADEQ issued two new NOVs to Johnson Utilities in connection with
its delivery of substandard effluent to the San Tan Village Homeowners Association.² Based on
these new NOVs, Commission Staff continues to recommend in Docket No. WS-02987A-12-
0136 that Johnson Utilities only be issued an Order Preliminary concerning its CC&N

¹ This would include closing all open Notices of Violation at ADEQ, satisfying the judgment in Maricopa County Superior Court Docket No. CV2008-000141, and resolving all issues in Commission Docket No. WS-02987A-13-0053.

² NOV 140548, dated May 30, 2013 and NOV 140757, dated May 30, 2013. Copies of these NOVs were filed in Docket Nos. WS-02987A-99-0583; WS-02987A-00-0618; WS-02987A-00-0774; and WS-02987A-00-0784.

1 application until it satisfies a number of conditions including being in full compliance with
2 ADEQ.³

3 Staff's position in Docket No. WS-02987A-12-0136 is consistent with the position that
4 Staff has taken concerning Far West Water & Sewer, Inc.'s rate application in Docket No. WS-
5 03478A-12-0307. In that docket, Staff supports a condition that:

6 Any increase in rates and charges approved in this proceeding shall not become
7 effective until Far West files documentation from ADEQ that Far West's
8 wastewater treatment plants are in compliance with ADEQ's Consent Judgment
9 as it may be amended.⁴

10 It would be inconsistent and poor public policy to allow further rate relief for Johnson
11 Utilities while it remains out of compliance with ADEQ, yet require ADEQ compliance as a
12 condition for Far West's rate increase and a condition for Johnson Utilities' CC&N extension.
13 Johnson Utilities' latest NOV's are serious and the violations caused significant public outrage.
14 Until they are closed, it would send the wrong message to further amend Decision No. 71854.
15 The Commission should not provide any further rate increases to Johnson Utilities until all open
16 ADEQ have been closed.

17 **II JOHNSON UTILITIES HAS NOT SATISFIED THE SUPERIOR COURT** 18 **JUDGMENT**

17 Exhibit A is a copy of the May 20, 2013, Judgment entered by Judge John Rea in
18 Superior Court against Johnson Utilities and in favor of Swing First. This Judgment is further
19 evidence that Johnson Utilities has grossly mistreated Swing First.⁵

20 In the Superior Court matter, Swing received two jury verdicts in its favor concerning the
21 parties' contract disputes, one jury verdict in its favor for quantum meruit, and one jury verdict in
22 its favor for trespass. David Ashton, Swing First's manager, also received a jury verdict against

³ See Staff's Notice of Filing Supplement to Closing Brief, dated June 17, 2013, in Docket No. WS-02987A-12-0136.

⁴ Staff Brief dated June 11, 2013, at 18.

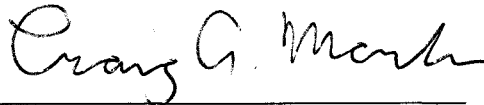
⁵ Swing First's Complaint in Docket No. WS-02987A-13-0053 is evidence that Johnson Utilities continues to mistreat Swing First.

1 Johnson Utilities and George Johnson for defamation, including a punitive damages award.⁶ For
2 a jury to award punitive damages, Swing First had to meet the burden of proving by clear and
3 convincing evidence, either direct or circumstantial, that Johnson Utilities acted with an evil
4 mind.

5 The jury verdicts are reflected in the Judgment attached as Exhibit A. The total Judgment
6 amounts to approximately \$445,000. As should be of no surprise, Johnson Utilities is doing
7 everything it can to delay paying the Judgment. And the only likely result will be to continue
8 running up legal fees for Swing First.

9 Swing First again asks the Commission to not provide Johnson Utilities any additional
10 rate increases until such time as Johnson Utilities has resolved all open issues with Swing First,
11 including satisfying the Superior Court Judgment and resolving Swing First's new Commission
12 Complaint.

13 RESPECTFULLY SUBMITTED on June 18, 2013.

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⁶ The defamation occurred in retaliation against filing David Ashton for filing testimony on behalf of Swing First on March 2, 2009, in the above-captioned docket.

Original and 13 copies **filed**
on June 18, 2013, with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies mailed and e-mailed
on June 18, 2013, to:

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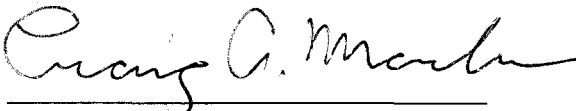
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By:



Craig A. Marks

Exhibit A

FILED

5-20-13 3:46 pm
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L. Gilbert, Deputy

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Attorneys for Defendants/Counterclaimants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JOHNSON UTILITIES, LLC, et al.,

Plaintiff/Counterclaimant,

vs.

SWING FIRST GOLF, LLC, et al.

Defendants/Counterclaimants.

No.: CV2008-000141

JUDGMENT

(Assigned to the Honorable John Rea)

This matter having come before the Court on trial by jury, the jury having rendered its verdict, and good cause appearing therefor, this Court hereby **AWARDS, ORDERS AND DECREES,**

I. On the cause of action for quantum meruit, judgment is hereby granted in favor of Defendants/Counterclaimants Swing First Golf, LLC and David Ashton, and against Plaintiff/Counterdefendant The Club at Oasis, LLC in the amount of \$54,000.00.

1 II. The above referenced sum shall accrue interest in the amount of 4.25%
2 from November 1, 2006 through the date of the judgment.

3 III. On the cause of action for breach of contract, judgment is hereby granted in
4 favor of Defendant Counterclaimant Swing First Golf, LLC and against
5 Plaintiff/Counterdefendant Johnson Utilities, LLC in the amount of \$41,883.11.

6 IV. The above referenced sum shall accrue interest in the amount of 4.25%
7 from January 1, 2008 through the date of the judgment.

8 V. Plaintiffs/Counterdefendants The Club at Oasis, LLC and Johnson Utilities,
9 LLC shall further pay the amount of ~~\$300,737.85~~ to Defendant/Counterclaimant Swing
10 First Golf, LLC and David Ashton as and for attorneys' fees along with \$ ~~2,000~~ ^{3,312.50} as
11 and for court costs incurred herein.

12 VII. On the cause of action for defamation, judgment is hereby granted in favor
13 of Defendant/Counterclaimant David Ashton, and against Plaintiffs/Counterdefendants
14 Johnson Utilities, LLC and GEORGE H. JOHNSON and JANA S. JOHNSON in the
15 amount of \$10,000.00 for damages and the amount of \$10,000.00 as and for punitive
16 damages.

17 VIII. The above referenced sums shall accrue interest at the rate of 4.25% per
18 annum from the date of judgment until paid.

19 ~~IX. Defendants/Counterclaimants shall be entitled to recover all attorneys' fees~~
20 ~~and costs incurred in enforcing the terms of this judgment~~

21 X. The Court finds that there is no just reason for delay and expressly directs
22 that this final judgment be entered forthwith.

23 DATED this 15th day of May, 2013.

24 
25 Judge John Rea

Maricopa County Superior Court

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